

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Michael Dove	Examiner:	Steven Paul Sax
Serial No.:	09/838,695	Group Art Unit:	2174
Filed:	April 19, 2001	Docket No.:	BU1327/0033-064001
Title:	APPARATUS AND METHOD FOR PERSISTENT DISPLAY INTERFACE		

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant has reviewed and considered the Final Office Action mailed on April 17, 2007 and the Advisory Action mailed on August 27, 2007. Applicants respectfully submit that the rejections of record in the above-identified patent application are clearly not proper and are without basis as follows, and request review of these rejections based on the below remarks. Applicant's October 16, 2006, and August 17, 2007 Responses are hereby incorporated by reference herein. Claims 1-43 are pending in this application, of which claims 1, 10, 20, 31, 37, 38, 41 and 42 are independent.

Applicant notes that telephonic interviews were held between Applicant's undersigned representative and the Examiner on October 10, 2006 and October 12, 2006. In those interviews, it was Applicant's understanding that amendments agreed to in the interviews would clearly render the primary reference, U.S. Patent 6,523,064 to Akatsu et al. (hereafter "Akatsu"), as non-analogous art because Akatsu relates to selection of devices on a network and not to display of "program data windows," such as in a windowed operating system, as recited in the claims. Applicants amended the claims as agreed to in the interviews. However, Akatsu was then reasserted against the claims in the April 17, 2007 Final Office Action. In Applicant's August 17, 2007 Response, Applicant requested that, at a minimum, the finality of the April 17, 2007 Office Action be withdrawn in order to provide Applicant with the opportunity to fully address the rejections on the merits in view of the fact that an agreement was reached regarding Akatsu and Applicant amended the claims in accordance with that agreement. In the Advisory Action, an agreement different to that of Applicant's understanding was set forth in response to

Applicant's request to withdraw finality. An Examiner Interview Summary was never issued with respect to the October 10, 2006 and October 12, 2006 interviews.

Notwithstanding the foregoing, Applicant respectfully submits that the following is sufficient to overcome the rejections of the claims set forth in the April 17, 2007 Final Office. Applicant respectfully requests that the Pre-Appeal panel issue a notification of withdrawal of the pending rejections in view of the following.

### REMARKS

**I. Akatsu in view of Raheman and Sadamatsu fails to render independent claims 1, 10, 20, 31, 37, 38, 41 and 42 and dependent claims 2-9, 11-19, 21-30, 32-36, 39, 40 and 43 obvious because, at a minimum, Akatsu is non-analogous art.**

Claim 1 recites:

An apparatus for producing a perceptible representation of program data windows, comprising:

an arbiter adapted to:

(a) select a program to be a dominant program from among a plurality of programs seeking a master persistence attribute to display a program data window according to a predetermined priority hierarchy, and

(b) assign the master persistence attribute to the selected program, wherein the program data window of the selected program is displayed concurrently with program data windows of other programs of the plurality of programs while not being obscured by the program data windows of the other programs and while overlapping at least one program data window of the other programs.

Applicant notes that each of the other independent claims, 10, 20, 31, 37, 38, 41 and 42, include similar limitations of those of claim 1 discussed below. Therefore, the following remarks apply equally to each of the independent claims.

Claim 1 is directed to an apparatus for producing a perceptible representation (e.g., displaying) of program data windows, such as for various programs running on a computing system running a windowed operating system. The apparatus of claim 1 includes an arbiter, which may be implemented in, for example, a gatekeeper. The arbiter is adapted to select a program to be a dominant program according to a predetermined priority hierarchy and assign a master persistence attribute to the selected program. The apparatus of claim 1 displays the program data window of the selected program concurrently with program data windows of other

programs. In the apparatus of claim 1, the program data window for the selected program is not obscured by the other program data windows and overlaps at least one program data window of the other programs.

An example embodiment of such an apparatus is described in the Summary of the present application on page 3, line 23 through page 4, line 26, which was also set forth in Applicant's August 17, 2007 response in the last paragraph on page 3, continuing onto page 4. The panel is referred to the Summary of the Application as filed or the August 17, 2007 Response for this portion of the description.

From the language of claim 1 in view of the above-referenced portion of the description, and the description as a whole, claim 1 is clearly directed to producing perceptible representations of program data windows for programs being executed on computing systems running windowed operating systems.

In contrast, Akatsu is directed to a network gateway device that is used to select between multiple sources (network devices) on a network, such as home entertainment network. Such a gateway 504 is illustrated in FIG. 5 of Akatsu as being implemented in a home entertainment and home office system. For instance, the gateway 504 is used to select between various media feeds for display on a television monitor 508. *See* Akatsu, column 6, lines 32-61 and FIG. 5. The media feeds in FIG. 5 of Akatsu include a satellite 582 via a satellite receive 540, a broadcast tower 586 via an antenna 544, as well as feeds from local land lines 592, such as coaxial cable via a cable receiver 556, among other land line sources.

In view of the foregoing, Applicant respectfully submits that the subject matter of Akatsu is not analogous to the subject matter of claim 1. Specifically, one of skill in the art, at the time the invention was made, would not refer to IEEE gateway devices for selection between media feeds (or other network devices) to implement an apparatus for displaying program data windows, such as recited in claim 1. Therefore, on at least this basis, the rejection of claim 1 and its dependent claims 2-9 is improper and without basis, and should be withdrawn.

As noted above, independent claims 10, 20, 31, 37, 38, 41 and 42 include similar limitations to the limitations of claim 1 discussed above. Therefore, claims 10, 20, 31, 37, 38, 41 and 42 are not obvious over Akatsu in view of Raheman and Sadamatsu for at least the same or similar reasons as discussed above with respect to claim 1. Furthermore, claims 11-19 depend

ultimately from claim 10; claims 21-30 depend ultimately from claim 20; claims 32-36 depend ultimately from claim 31; claims 39 and 40 depend ultimately from claim 38 and claim 43 depends from claim 42. Accordingly, claims 11-19, 21-30, 32-36, 39, 40 and 43 are also not obvious over Akatsu in view of Raheman and Sadamatsu by virtue of claim dependency. Therefore, the rejections of claims 10-43 are also improper and without basis, and should be withdrawn.

**II. Akatsu in view of Raheman and Sadamatsu also fails to render independent claims 1, 10, 20, 31, 37, 38, 41 and 42 and dependent claims 2-9, 11-19, 21-30, 32-36, 39, 40 and 43 obvious because there is no likelihood of success to produce the subject matter of the claims.**

Further to the above, for the sake of argument without concession, even if one of skill in the art, at the time the invention was made, were to consult Akatsu in view of Raheman and Sadamatsu, there is no likelihood of success to produce the apparatus of claim 1 (or the subject matter of the other independent claims). For purposes of this response, it is assumed, though not conceded, that the remarks in the April 17, 2007 Final Office Action made with respect to Raheman and Sadamatsu are correct.

The gateway device of Akatsu is implemented using an IEEE 1394 bus interface. See Akatsu, column 1, line 58 through column 6, line 29. As set forth in Akatsu, the physical layer 412 provides a arbitration service that *ensures that only one node at a time is sending data*. Id., column 6, lines 8-10. The Office Action states that this arbitration service constitutes the arbiter/gatekeeper of the pending claims. Applicant respectfully disagrees with this assertion.

As discussed above, the gateway device 504 of Akatsu is used to select between media streams or network source nodes. The arbitration service of the gateway 504 is used to select a single media source (or network node) from a plurality of media sources (or network nodes). The arbitration service *ensures that only one node at a time is sending data*. Accordingly, the gateway device 504 of Akatsu makes sure that, for instance only one device at a time is allowed to display data on the television 508. Therefore, content from a selected device (i.e., the satellite 582) is not displayed concurrently with content from other devices (i.e., the broadcast tower

586). Accordingly, *Akatsu directly teaches away* from concurrently displaying a program data window for a selected program with program data windows of other programs.

While Raheman and Sadamatsu may disclose displaying program data windows concurrently and the use of a predetermined hierarchy, the subject matter of those applications is technically incompatible with Akatsu because Akatsu does not relate at all to the display of program data windows and discloses a gateway that is used to select between a plurality of media streams (or network nodes) for singular display (or singular communication).

Based on the foregoing, the independent claims 1, 10, 20, 31, 37, 38, 41 and 42 and dependent claims 2-9, 11-19, 21-30, 32-36, 39, 40 and 43 are not obvious over Akatsu in view of Raheman and Sadamatsu on this further basis. Accordingly, Applicant respectfully submits that the rejections are further improper and without basis, and should be withdrawn.

### **III. Conclusion**

Applicant respectfully submits that the claims are in condition for allowance and earnestly requests notification to that effect. The Pre-Appeal panel is invited to telephone Applicants' attorney (360-930-3533) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3521.

Respectfully submitted,

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Date: September 17, 2007

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